IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 10907 of 2005

Between:

Gurram Pratap Reddy S/o.Gurram Venkat Reddy
Kakinada Minicipal Corporation, Kakinada, East Godavari District.

..... PETITIONER

AND

1 Prl.Secretary Municipal Administration and Urban Development Government of A.P.., Secretariat Buildings, Hyderabad.
2 The Commissioner/Director of Municiapl Administration, A.C.Guards, Hyderabad.
3 The District Collector, East Godavari District Kakinada.
4 The Joint Collector, East Godavari District, Kaakinada.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction more particularly one in the nature of writ of Certiorari to call for the records pertaining to O.A.No.1141/2005 dt.29.4.2005 on the file of the A.P.Admn. Tribunal, Hyderabad and to quash the same as illegal, arbitrary and the one passed without application of mind and consequently set aside the impugned G.O.Rt.No.309 dt.7.3.2005 passed by the 1st respondent.

Counsel for the Petitioner:MR.K.RAM REDDY

Counsel for the Respondent No.: GP FOR MUNICIPAL ADMN. & URBAN DEV. / Korrapati Subba Rao

The Court made the following :

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ORDER: (Per Hon'ble Sri Justice J. Chelameswar)

Aggrieved by an Order in O.A.No.1141 of 2005, dated 29-4-2005, on the file of A.P. Administrative Tribunal, Hyderabad, the unsuccessful applicant therein, filed the present writ petition. The petitioner earlier worked as the Special Grade Municipal Commissioner of the erstwhile Kakinada Municipality. The Government of Andhra Pradesh in exercise of the power under Section 3 of the A.P. Municipal Corporations Act, 1994 (Act 25 of 1994), notified a certain area under Section 3 of the said Act, which is an undisputed fact. The legal consequences of such a notification is that by virtue of a Section 2(d) "a Corporation shall be deemed to have been constituted for such area". On the creation of such a Corporation, various consequences followed. One of them is specified under Section 14 of the said Act, which reads as follows:-

> **14. Application of the provisions of the Hyderabad Municipal Corporations Act, 1955:-** *(1) Save as otherwise expressly provided herein, all the provisions of the Hyderabad Municipal Corporations Act, 1955 (hereinafter in this section referred to as the said Act) including the provisions relating to the levy and collection of any tax or fee except Chapter V and Sections 380, 381, 382, 383, 384, 385 and 387 in Chapter XI thereof are hereby extended to and shall apply mutatis mutandis to a Corporation constituted under this Act and the said Act shall, in relation to the Corporation be read and construed as if the provisions of the said Act had formed part of this Act.*
>
> *(2) For the purpose of facilitating the application of the provisions of the Hyderabd Municipal Corporations Act, 1955, to the Corporation,*

the Government may, by notification, make such adaptations and modifications of the said Act and the rules and bye-laws made thereunder whether by way of repealing, amending or suspending any provisions thereof, as may be necessary or expedient and thereupon the said Act and the rules made thereunder, shall apply to the Corporation subject to the adaptations and modifications so made.

(3) Notwithstanding that no provision or insufficient provision has been made under sub-section (2) for the adaptation of the provisions of the said Act, or the rules made thereunder, any Court, Tribunal or Authority required or empowered to enforce these provisions may, for the purpose of facilitating their application to the Corporation construe these provisions in such manner, without affecting the substance, as may, necessary or proper regard to the matter before the Court, Tribunal or Authority.

From the language of sub-section (1) of Section 14 it appears that on the creation of a new Corporation contemplated under Section 3 all the provisions of the Hyderabad Municipal Corporation Act are automatically extended except those which are specifically enumerated in the said sub-section i.e., provisions of Chapter V and Sections 380 to 385 and 387 occurring in Chapter XI of Hyderabad Municipal Corporations Act.

Sub-section (2) of Section 14 of the said Act enables the Government of Andhra Pradesh by a notification to make such adaptations and modifications of the Hyderabad Municipal Corporations Act and the Rules and the bye-laws made thereunder, as may be necessary or expedient.

Consequent upon the creation of the Corporation, the Government of Andhra Pradesh felt that there is need to post a higher level officer as Commissioner of the newly constituted Corporation in the public interest and therefore the Joint Collector, East Godavari District is kept Full Additional Charge of the post of Commissioner, Kakinada Corporation. It is also stated that having regard to the service of the petitioner, the petitioner does not have the requisite qualification to hold the post of a Commissioner of the Municipal Corporation. Therefore, he was designated as Deputy Commissioner of the newly constituted Kakinada Corporation, which, it is stated in the counter by the respondents, is equivalent

to the post of the Special Grade Municipal Commissioner.

The grievance of the petitioner is that while he was the Special Grade Municipal Commissioner of the erstwhile Kakinada Municipality, the Government down-graded his post as a Deputy Municipal Commissioner to the newly constituted Municipal Corporation, which according to the petitioner is impermissible and therefore he approached the Andhra Pradesh Administrative Tribunal by the above-mentioned O.A., unsuccessfully and hence, the present Writ Petition.

The learned Counsel for the petitioner make two submissions. Firstly, he submitted that in view of the language of Section 14 (2) of the A.P. Municipal Corporations Act, 1994 the provisions of the Hyderabad Municipal Corporations Act, do not automatically apply to the newly constituted Municipal Corporations, but a specific notification by the Government is required extending the operation of the provisions of the Hyderabad Municipal Corporations Act. We have already noticed the language of Section 14 of the A.P.Municipal Corporations Act, 1994. We regret our inability to accept the construction placed by the learned counsel for the petitioner on the language of Section 14. We are of the clear view that the provisions of the Hyderabad Municipal Corporations Act apply to any newly constituted Corporation automatically except those except those which are specifically enumerated in the said sub-section i.e., provisions of Chapter V and Sections 380 to 385 and 387 occurring in Chapter XI of Hyderabad Municipal Corporations Act, referred already. Sub-section (2) is only an enabling Section to adapt or modify any of the provisions of the Hyderabad Municipal Corporations Act, 1994 if the Government feels necessary to modify or adapt.

The next submission made by the learned Counsel is that by virtue of the operation of Section 16 (6) of the Municipal Corporations Act, 1994, the petitioner's designation is protected.

Section 16 of the Act deals with the situation arising during the period of transition of a Municipality into a Municipal Corporation. Sub-section (6) of Section 16 deals with the rights of the employees of the liquidated Municipality and it reads as follows:-

> *(6) notwithstanding this Act, every officer or employee who, immediately before such commencement was in the service of the*

Municipality shall be deemed to be an officer or employee of the Corporation:

Provided that, --

i. *the terms and conditions applicable to such officers and employees consequent on their absorption in the service of the Corporation shall not be less favourable than those applicable to such employees immediately before such commencement, as pay and allowance, leave, pension, gratuity, provident fund and age of superannuation; and*

ii. *the service rendered by any such officer or other employee under the municipality upto such commencement shall be deemed to be in service under the Corporation and he shall be entitled to count that service for the purpose of increments, leave, pension or provident fund and gratuity;*

Provided further that any officer or other employee serving in the Municipality shall give an option to be exercised within such time and in such manner as may be prescribed either to be absorbed in the service of the Corporation or to be retained in the service constituted, under Section 72 of the Andhra Pradesh Municipalities Act, 1965, or to be retrenched from the service of the Municipality on such retrenchment benefits as may be prescribed;

The learned Counsel for the petitioner laid emphasis on the clause (i) of the first proviso to sub-section (6) and submitted that by virtue of the operation of the operation of the said proviso, his status as the Commissioner of the Municipality is required to be protected. We find no such obligation on going through the provisions of sub-section (6), clause (i) to the proviso. Sub-section (6) deals with the continuation of the service of the employees of the erstwhile

Municipality with the further stipulation that the conditions of service of such employees who are continued in the newly created Corporation insofar as the pay and allowance, leave, pension, gratuity, Provident Fund and age of superannuation shall not be less favourable than those applicable to such employees immediately before their absorption in the service of the Corporation. It doesn't deal with the status of the Office. It is not the grievance of the petitioner that either his pay and allowances or the age of superannuation etc., specified under clause (i) to the proviso of sub-section (6) of Section 16 are modified or downgraded. In our view the Tribunal rightly rejected the submissions of the petitioner. We see no reason to interfere with the impugned Order.

The writ petition is dismissed, at the admission stage. No costs.

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JUSTICE J. CHELAMESWAR

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JUSTICE M.VENKATESWARA REDDY

8th June, 2005

SMR

To

1 Prl.Secretary Municipal Administration and Urban Development Government of A.P.., Secretariat Buildings, Hyderabad.
2 The Commissioner/Director of Municiapl Administration, A.C.Guards, Hyderabad.
3 The District Collector, East Godavari District Kakinada.
4 The Joint Collector, East Godavari District, Kaakinada.

5) 2 CCs to GP FOR MUNICIPAL ADMN. & URBAN DEV. , High Court Buildings, Hyderabad (O.U.T.)

6) 2 CD copies